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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourteenth session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 7 May 1996, at 10 a.m.

Chairperson: Mr. ALSTON

later: Mr. GRISSA

later: Mr. ALSTON

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Initial report of Guatemala (continued) (E/1990/5/Add.24; HRI/CORE/1/Add.47; E/C.12/1995/LQ.9; written replies with no symbol)

1. At the invitation of the Chairperson, Mr. Díaz-Duque, Mr. Arranz Sanz, Mr. Alonzo Mazariegos and Mr. Olivero (Guatemala) took places at the Committee table.

2. Mr. ARRANZ SANZ (Guatemala) introduced the initial report of Guatemala (E/1990/5/Add.24) on implementation of the International Covenant on Economic, Social and Cultural Rights, which had entered into force for his country on 9 August 1988. Submitted to the Committee in late 1994 in conformity with the rules set forth in the Manual on Human Rights Reporting and the general guidelines, it did not entirely reflect what was happening in Guatemala, given the changing situation. His Government had no desire whatsoever to conceal the truth and would attempt, through the delegation, to supplement the information contained in the report.

3. Under the Guatemalan Constitution, treaties and conventions signed and ratified by Guatemala took precedence over internal law, provided that the requisite procedure for their incorporation into internal law was followed. An appeal could be lodged on the ground of unconstitutionality.

4. He briefly summarized the various political and social developments in Guatemala during the past 10 years, years which had brought hope for democracy and for the observance and realization of human rights. Known as the period of "democratic transition", it had seen the holding of free elections and the establishment of three civilian Governments: the first from 1986 to 1991, the second from 1991 to 1996 and the third from 1996 to 2000. He described in detail the crisis which Guatemala had suffered as a result of the attempted coup d'état by the serving President on 25 May 1993; the crisis had been thwarted thanks to the immediate implementation of existing legal machinery. With the support of the various sectors of Guatemalan society and the international community, the Office of the Human Rights Procurator had had a major role in restoring normality and been one of the pillars of the democratic transition process in Guatemala. The Court of Constitutionality had also played a decisive role in the return to normality. A new Congress had been democratically elected, together with a new Supreme Court of Justice, which was depoliticized and honest. Those events had transformed the political, economic and social situation, and had had positive effects on Guatemalan society in general: constitutional reform, the peace process, action to combat poverty, economic and social development, the strengthening of institutions, action to combat impunity, the holding of free and transparent general elections, and the fulfilment of international commitments undertaken by the State in the area of human rights, notably under article 2, paragraphs 1 and 2, of the Covenant.

5. That political and social crisis had enabled progress to be made in the peace negotiations and had increased the State's concern for the observance of human rights. The State was now fully determined to fulfil its commitments towards the international community with regard to the Covenants and Conventions to which it had acceded. In particular, Guatemala's ratification of the International Covenant on Economic, Social and Cultural Rights had been confirmed by congressional decree and had taken effect on 8 August 1988. It formed part of a process of change that included the elimination of the practices constituting violations of human rights which had marked the political and social life of the years prior to ratification. The important role played by the Office of the Human Rights Procurator in the consolidation of the rule of law should be re-emphasized.

6. That period had also seen the opening of civil society, its difficulties being taken into account in the peace negotiations, the return of Guatemalan families who had taken refuge in Mexico, the reform of the Constitution following direct consultation of the people in order to adapt its provisions to the country's political and social reality, and a legal reform with the entry into force of the new Code of Criminal Procedure in July 1994.

7. The United Nations Mission for Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), initiated in November 1994, and the human rights advisory services had acknowledged in their respective reports that the Government had not pursued a policy of human rights violations; violations had unfortunately gone unpunished because of the difficulties encountered by the Government in that area.

8. During the second half of 1995 and in January 1996, elections had taken place under the supervision of the international community. The turnout had increased, particularly among the Maya, resulting in the election of indigenous mayors in about 100 municipalities, including 2 provincial capitals, those of Sololá and Quetzaltenango, the country's second largest city, and the election of 6 new indigenous deputies to Congress.

9. In the peace process, more than half the planned agreements had so far been signed. Particular mention should be made of the Agreement of 31 March 1995 on the Identity and Rights of Indigenous Peoples, which defined Mayan identity in terms of ancestry, language, dialect, world view, the role played by Mayan women in the protection of the group's heritage, philosophy, and artistic and aesthetic concepts. Also recently, on 22 and 23 February 1996, meetings had been held in Mexico City between the Unidad Revolucionaria Nacional Guatemalteca (URNG) and the Guatemalan Government. In the social field, he mentioned the development of community organizations. All those developments had been accompanied by economic progress; in 1995, inflation had fallen to 8.6 per cent, economic growth had reached 5 per cent, and tax revenues had increased by 33 per cent, in relative terms.

10. Referring to the establishment of legal provisions, he stressed the humanist nature of the Constitution, which reaffirmed the primacy of the individual and recognized the role of the family in the transmission of society's spiritual and ethical values and the role of the State in the

consolidation of the rule of law, security, justice, equality, liberty and peace. Considerable progress had been made in terms of constitutional guarantees, with the creation, for example, of a standing court concerned exclusively with amparo and whose principal purpose was to safeguard the constitutional order, and the establishment of the Congressional Human Rights Commission. The offences of extrajudicial execution, enforced disappearance and torture had been incorporated into the new Penal Code of 1995. The Legislative Commission was also studying the incorporation of the offence of racial and ethnic discrimination. In 1994, in order to enhance the effectiveness of justice, a Public Prosecutor's Office Organization Act had been promulgated and a new Code of Criminal Procedure had entered into force. Those innovations had brought about major changes in the conduct of investigations and criminal proceedings, and hence in combating impunity.

11. As the executive had decided to abolish the post of military commissioner, 24,000 people who had been serving as such had been demobilized in September 1995, and the Army Establishment Act had been amended accordingly. The 1995 Act on the deactivation of explosive devices and the Act on identity documents for the uprooted population should also be mentioned.

12. Articles 66 and 69 of the Guatemalan Constitution imposed an obligation on the Government to promote the economic and social development of indigenous peoples of Mayan origin. The executive, in consultation with the parties concerned, had therefore set up a Guatemalan Indigenous Development Fund.

13. He singled out five recent events (early 1996) to which his Government attached great importance: on 5 March, Congress had unanimously approved ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries; on 7 March, the Court of Constitutionality had declared unconstitutional articles 232, 233, 234 and 235 of the Penal Code, which had been recognized as discriminatory against women under the relevant international conventions; on 14 March, Congress had approved the Optional Protocol to the International Covenant on Civil and Political Rights; on 20 March, the URNG command had announced the unilateral suspension of its military offensives, following which the Guatemalan authorities had ordered the army to cease all operations against the insurgents; and on 6 May, an agreement had been signed in Mexico City on socio-economic and agrarian questions, with the aim of laying the foundations for participatory economic and social development. That agreement, reached after nine months of negotiations between the Government and the URNG, invited all sectors to encourage domestic and foreign investment in order to create jobs and establish firm foundations for development in the fields of education, health and housing and the rural sector. It called for a substantive increase in social spending to benefit the most disadvantaged segments of the population, lesser concentration of land, particularly for the benefit of the indigenous peoples, and the reorganization of public finances.

14. He could not leave unmentioned the action of MINUGUA following negotiations between his Government and the URNG under the auspices of the Secretary-General, resulting in the signing, on 29 March 1994, of the Comprehensive Agreement on Human Rights in Guatemala. In that Agreement, the parties had called on MINUGUA to ensure respect for human rights, investigate

complaints of human rights violations, and see to it that the competent national bodies were undertaking the necessary follow-up independently and efficiently. The parties had also expressed the hope that the Mission would be empowered to move freely throughout Guatemala, to meet freely with any person of its choosing and to carry out any visits to State premises and URNG camps it might deem necessary under its mandate. The Mission had also been mandated to cooperate with national institutions in the promotion of technical cooperation programmes and to assist public institutions, such as the Public Prosecutor or the Human Rights Procurator, and to foster the development of a human rights culture. To date, the Director of MINUGUA had submitted four reports to the Secretary-General. The recommendations on the action of the National Police had already been taken into account by the Ministry of the Interior.

15. Members of the police and the armed forces were receiving systematic training in human rights, along with copies of the Code of Conduct for Law Enforcement Officials, the Basic Principles on the use of Force and Firearms by Law Enforcement Officials, the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, and the Body of Principles for the Protection of All Persons under Any Forms of Detention or Imprisonment. The Ministry of National Defence was organizing courses for its employees on international humanitarian law, with the assistance of staff from the International Red Cross.

16. He hoped that everything he had said reflected the political will of the Government to ensure respect for human rights, including economic, social and cultural rights. He none the less acknowledged that the Government still had a lot to do to remedy the problems faced by many people, including poverty, housing shortages and the lack of drinking water. In order to continue to make progress towards peace and development, the Government needed international solidarity.

17. The CHAIRPERSON thanked the delegation for its interesting oral statement, and particularly its outline of recent developments. Noting that the Government had drafted detailed written replies to the questions contained in the list of issues (E/C.12/1995/LQ.9), he invited Committee members to make comments and ask questions relating to section I entitled "General framework in which the Covenant is implemented".

18. Mr. ALVAREZ VITA expressed satisfaction at the high-ranking level of the Guatemalan delegation and the quality of its oral presentation. He congratulated the Government on its written replies to the list of issues, which were clear and well drafted, thus making the Committee's task considerably easier. Basically, the Guatemalan Constitution was excellent, particularly as concerned the protection of human rights. Unfortunately, as was well known, it had frequently been breached. In addition, the death penalty was still carried out - in defiance of the American Convention on Human Rights, to which Guatemala was a party, thus posing a serious problem concerning the implementation of the provisions of the Constitution and other laws.

19. Noting that the agreement signed on 6 May 1996 in Mexico City called for a major increase in social spending and reduced concentration of land ownership, he wondered if the Government would have the necessary resources to carry out the proposed measures. He had no doubt as to the goodwill of the Government, which had been in office only since January 1996, but wondered how the authorities intended to deal in practice with the serious difficulties the country was facing, which the delegation had made no attempt to hide.

20. Mr. Grissa took the Chair.

21. Mr. SIMMA noted with satisfaction that the initial report (E/1990/5/Add.24) had been drafted in conformity with the general guidelines, that the core document (HRI/CORE/1/Add.47) was very complete and that the written replies were detailed. He did, however, regret that the report was somewhat sketchy and felt that the core document had devoted a disproportionate amount of space - about 30 pages - to the past political development of the country, with just a few pages on recent history and the current situation. He also wondered about the almost incidental reference to an "internal armed conflict" in paragraph 496 (i) of the core document.

22. Regarding paragraph 449 of that document, he asked what was meant by the statement that the army was "one and indivisible". Was that meant to suggest that there were not, or had not been at the time of writing, any private military forces? As to paragraph 461, he was surprised that in the composition of the judiciary no mention was made of judges, although numerous courts were referred to, and wondered if that was simply a drafting error. He also asked for clarification on the issue of impunity and whether the Government was succeeding in overcoming the obstacles to its eradication. More information was needed on the status of the Covenant and whether it was undergoing the process of preparation and adoption as law by Congress, referred to in paragraph 506, which would enable it to be invoked before the courts.

23. Turning to question 3 of the list of issues, concerning an optional protocol to the Covenant, and the brief commentary on that question in the written replies, he asked whether the Government truly supported the elaboration of such a protocol. He also asked for figures and statistics on extrajudicial executions and enforced disappearances, both since the new Government had assumed office and in comparison with earlier years.

24. Mr. KOUZNETSOV, noting that, in reply to question 2 of the list of issues, the Government had stated that the Covenant took precedence over domestic law and could be invoked like any other law before the courts, asked whether in practice the Covenant had ever been so invoked. If not, why not?

25. Mr. MARCHAN ROMERO asked whether the constitutional reform process to which the representative had referred in his oral presentation would have an impact on economic, social and cultural rights.

26. Mr. TEXIER said it should not be forgotten that Guatemala was emerging from a very serious conflict which had cost the lives of tens of thousands of people and affected every segment of society. At the present time, which was

indeed a period of transition, there were encouraging signs. For example, about 100 indigenous representatives had been elected to municipal office and human rights activists had been elected as deputies.

27. Turning to the documents provided by the Government, he said that although the initial report did not give enough information, the written replies and oral presentation had been very satisfactory. He would welcome further information on several points. Had Guatemala ratified the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (a protocol which in fact was not yet in force)? What was the exact situation of the refugees who had returned to Guatemala? How were they living and had they been integrated? And he asked for details on the latest agreement between the President of the Republic and the URNG, which seemed to be of great importance. The agrarian question had been one of the causes of the armed conflict; it would therefore be interesting to know at some point what the agreement called for in terms of land distribution.

28. Mr. RATTRAY welcomed the copious information contained in the initial report and in the written replies, which stressed Guatemala's legal and institutional framework. However, there were limits to the enjoyment of economic, social and cultural rights, and the delegation, while recognizing that Guatemalan society could not solve its difficulties on its own, had appealed for international cooperation. The problems had arisen because of a situation with deep historical roots, and international cooperation would not suffice if the Government did not undertake far-reaching reforms. Additional information was needed on the measures taken by the Government in that area. He also asked for examples of what the courts were doing to implement the economic, social and cultural rights embodied in the Covenant, particularly with regard to housing.

29. Mr. THAPALIA, referring to paragraph 467 of the core document, asked for more information on the Human Rights Procurator. And did the security forces receive training in human rights?

30. Mrs. JIMENEZ BUTRAGUEÑO welcomed the abundant information contained in the initial report and the written replies of the Government but wished to know more about the recent agreement between the Government and the indigenous peoples on agrarian reform.

31. Mr. ARRANZ SANZ (Guatemala), replying to Mr. Alvarez Vita, said that the new Government was making every effort to dispel the scepticism of the international community concerning Guatemala's future, but was aware that in four years it would be unable to resolve all the socio-economic difficulties. The major problem it faced was the impunity enjoyed by persons who had violated human rights. A reform of the Code of Criminal Procedure was under way in order to eliminate provisions that perpetrated impunity. Such provisions included the alternative measures to which the judge could resort at his discretion, and which would allow him to release a prisoner at the start of the legal proceedings. In addition, the examining magistrate would have three months instead of six to bring a case to court. Attorneys, judges and witnesses would enjoy protection. On 15 May 1996, a new Procurator-General of the Nation would take office. That showed the political will of the Government to act against those responsible for human rights

violations. The Vice-President of the Republic had recently referred to soldiers and police officers, both serving and retired, who had perpetrated human rights violations, notably during the Xamán massacre, and who would be tried by civil courts. Representatives of the executive, legislative and judiciary branches held frequent meetings with the aim of combating impunity.

32. The Government was making efforts to increase tax revenues and spend more on social policy, health and housing. The "Explosion of peace" operation would begin at the end of the year. The previous Government had made fruitful contacts with international organizations in Paris in order to implement programmes designed to consolidate peace. A new land survey would be carried out to implement land reform. He hoped that those examples of progress would be reflected in Guatemala's next periodic report.

33. Regarding the death penalty, prior to 1995 it had been applicable only to homicide, in conformity with the Pact of San José; Congress had then extended it to other offences, including kidnapping. The Government had protested and the President had not signed the relevant law, which had been promulgated by Congress without his approval. Nevertheless, a death sentence for kidnapping could be appealed against on the ground of unconstitutionality. He recognized that there was a strong contrast in Guatemala between legislation and practice, but the Government had the political will to remedy the situation, particularly by combating corruption. It was in favour of ratification of the future Protocol relating to abolition of the death penalty.

34. Concerning extrajudicial executions, the problem was serious and very real, but it was difficult to provide statistics on the matter as the definitions of such executions used by the various human rights organizations varied considerably.

35. The CHAIRPERSON invited Committee members to ask other questions relating to section I of the list of issues.

36. Mr. MARCHAN ROMERO asked if the draft constitutional reform would have an impact on economic, social and cultural rights.

37. Mr. ARRANZ SANZ (Guatemala) said that the agreement on the definition of indigenous peoples currently under negotiation referred to articles 66 to 72 of the Constitution, which called for the drafting of a law to implement those articles; however, such a law had not yet been put into practice. The agreement under negotiation, which concerned the fields of education, the identity of indigenous peoples, and their health and languages, would therefore have effects on economic, social and cultural rights as embodied in the Covenant. The Comprehensive Agreement on Human Rights would pave the way for complete restructuring of the State and would also have consequences in the social, taxation and educational fields. Once those agreements were concluded, they would be ratified either by the Constituent Assembly or by Congress and be followed by a national referendum.

38. Mr. WIMER ZAMBRANO said that the situation in Guatemala was hopeful, as could be gauged from the fact that the Guatemalan writer, Tito Monterroso, who had been living in exile in Mexico City for 42 years, had decided to return to his country. He asked for more information on the statistical method used to

conduct the census of indigenous peoples. While it was easy to count those who lived in particular localities, that was more difficult in the case of people scattered around urban areas. He would also like to know how the Government planned to finance the agrarian reform.

39. Mr. ADEKUOYE said he was struck by the flagrant contradictions between the extremely liberal legislative provisions mentioned in the report and the actual situation. For example, paragraph 541 (c) of the core document was contradicted by Guatemala's reply to question 6 of the list of issues, which stated that non-governmental organizations (NGOs) had not participated directly in preparing the periodic report. NGOs should be closely involved in the protection of human rights in Guatemala, and he asked what ties existed between the Government and the NGOs in that regard.

40. It would be interesting to know whether Guatemala was trying to obtain aid in the form of international cooperation in order to ensure economic growth and thereby increase the resources available for facilitating the realization of the rights defined in the Covenant. Had the Government prepared a list of needs on which it wished to obtain bilateral or multilateral aid?

41. Mr. AHMED thanked the delegation for its candour and sincerity in both the written report and the oral replies, and for Guatemala's evident good will, which seemed encouraging. He welcomed the Government's apparent spirit of tolerance which had allowed senior Catholic clergymen and the Human Rights Procurator to criticize its policy freely. Those persons had firmly attributed to the Government responsibility for the violence and human rights violations and denounced the unjust and imbalanced distribution of land in Guatemala, which in the long term created an extremely dangerous and explosive situation. The President of the Republic had publicly admitted the scope of social injustice and, implicitly, of the lack of respect for the economic, social and cultural rights of Guatemalans. Agrarian reform and more equitable land distribution were vital in ensuring respect for those rights. The country needed a peaceful revolution where those rights were concerned and in that connection agrarian reform was crucial. He asked what measures the new Government had taken to introduce the economic, social and cultural reforms necessary to encourage the international community to help Guatemala. Was the Government planning to implement a programme for those reforms?

42. Mr. CEAUSU thanked the Guatemalan delegation for coming before the Committee for the consideration of the initial report and for the quality of that report, which he had found very useful. He none the less agreed with Mr. Simma that there was insufficient information on the causes of the difficulties and tensions in Guatemala. On the other hand, he was pleased that the brevity of the report had been offset by the written replies to the list of issues.

43. Regarding implementation of article 2 of the Covenant, on non-discrimination, he understood that the problem of the employment of foreigners, as perceived in Guatemala, seemed to consist less in defending the right of foreigners to work than in defending Guatemalan workers against foreign workers. That being the case he asked how many foreigners were working in Guatemala, what was the proportion of foreign investment and in

what sectors. Regarding implementation of article 3, on equality between men and women, he was surprised that, in its written reply to question 10 of the list of issues, Guatemala had said that Guatemalan men and women had equal "opportunities" and "responsibilities", but not that they had equal rights. He was dismayed by the choice of the word "opportunities", especially because it was clear from the report that it was very difficult to establish even a minimum degree of equality between men and women in Guatemala.

44. Mr. Alston (Chairperson) resumed the Chair.

45. Mrs. BONOAN-DANDAN thanked the delegation for its good will in replying to the Committee's questions. She nevertheless hoped that the situation with regard to the equality of women and discrimination against women would be evaluated in a comprehensive and integrated manner, and not in piecemeal, compartmentalized fashion sector by sector. The decision of the Court of Constitutionality to abrogate the articles of the Penal Code on adultery and concubinage, which systematically penalized women, was encouraging.

46. She cited the report of the Committee on the Elimination of Discrimination against Women (CEDAW) at its thirteenth session in 1994, in which the Committee had expressed concern that the Guatemalan Government had not attached great importance to legal provisions that discriminated against women, particularly in the Civil Code and in the provisions relating to family law. She asked what progress had been made in eliminating those provisions of the Civil Code since the convening of the 1995 seminar of the Presidential Commission on Human Rights. What had been the conclusions and recommendations of that seminar? What programme to combat discrimination against women had it adopted?

47. Mr. GRISSA thanked the delegation for making a point of replying to the Committee's questions. Noting Guatemala's reply to question 7 of the list of issues, he stated that there did not seem to be a definition of indigenous groups in the report. He asked for more information in that connection. Were they of Amerindian, African or other origin? Were there any statistics about them? Was inter-ethnic marriage a common practice? Could indigenous people hold jobs in the Government and serve in the armed forces?

48. After an exchange of views in which Mr. ADEKUOYE and Mr. WIMER ZAMBRANO took part, the CHAIRPERSON invited members to continue consideration of the replies of Guatemala section by section, following which the delegation would be able to answer all the questions together.

49. Mrs. JIMENEZ BUTRAGUEÑO said she was very concerned about the written reply to question 10, namely, that within the framework of marriage it was the husband who represented the couple and managed joint assets. She asked whether the Government planned to maintain that provision, given that Guatemala had signed the Convention on the Elimination of All Forms of Discrimination against Women without reservations. She was also very concerned at the statement in the reply to the same question that women could not accept remunerated employment outside the home without their husband's consent. In its conclusions on the latest report of Guatemala, CEDAW had recommended that Guatemala should bring its practices into line with the Convention, for example by ensuring that judges and others responsible for the

interpretation and enforcement of the law, as well as legislators, saw to it that the provisions of the Convention were fully integrated into internal law. Noting that that recommendation had not been acted on, she asked what the Government planned to do in order to eliminate all the existing discriminatory provisions against women in internal law.

50. Mr. MARCHAN ROMERO asked how important was the agreement on the identity and rights of indigenous peoples, cited in Guatemala's reply to question 7 of the list of issues, in the regulation of various aspects of the lives of those peoples. He also wondered in what way the indigenous groups had taken part in the negotiations on the agreement reached between the Government and the URNG. What was the nature of the procedure that had led to that agreement, and which of its provisions directly concerned non-discrimination?

51. Mr. ADEKUOYE asked for an explanation of the methods Guatemala used to classify its population by ethnic or racial category. He wished to know how many coloured persons or members of ethnic groups had seats in Congress and what was the ethnic or racial composition of the refugees who had returned from Mexico.

52. Mr. TEXIER said that question 7 was, in his opinion, the most fundamental question asked of Guatemala because a major cause of the conflict was the inequality between the indigenous people and the "Ladinos", a situation with deep historical roots. To facilitate consideration of the report, in all its oral replies on implementation of the articles of the Covenant cited in the list of issues, the delegation should provide information on the practical measures the Government was taking to secure the integration of the indigenous population within Guatemalan society by guaranteeing them full exercise of all rights on equal terms with the members of other groups.

The meeting rose at 1 p.m.